

the ability to remain flexible and responsive — like their PPO rivals — to the needs of all potential location providers, those who demand a single point of contact and those who do not. It is of course harmful to the public interest that they are not permitted to do so, since one of the principal competitors is thereby hindered from serving a substantial fraction of location providers.

The second major defect is that premises owners often select a carrier based solely on payments they receive from the carrier and give little regard to the interests of the end user. This not only harms the public interest directly, by harming the end user, but it is also harmful to the interest of the BOC, whose name and reputation are at stake at each BOC payphone. End users do not know that the BOC is disqualified from recommending carriers.

Finally, of course, as already discussed, the Commission has proposed a compensation plan for “0+” calls that depends upon the IXC and the pay telephone owner negotiating over compensation, and a basic premise of such negotiation is that if the payphone owner doesn’t like the IXC’s offer, it will change the presubscription to some other IXC. Thus if the BOCs are not allowed to participate in selecting the carrier, they will not participate in the negotiated compensation for “0+” calls. Moreover, if they do not receive that compensation, but are

compelled to remove payphone costs from the carrier common line charge and other rates anyway, they will be faced with a strong incentive to remove payphones from public places, and that also would be contrary to the public interest.

No case can be made, then, that BOC participation in the selection of interexchange carriers at BOC pay telephone would not be in the public interest. Accordingly, Section 276 compels the Commission to repeal once and for all Judge Greene's supposedly temporary BOC carrier selection rule.

B. The Commission Need Not Be Concerned That the BOC Might Select Its Own Affiliated Interexchange Carrier.

In Paragraph 72 of the NPRM, the Commission seeks comment on "whether the ability to select the interLATA carrier serving their payphones is likely to permit the BOCs to behave anticompetitively in the payphone market in the absence of safeguards to prevent cost misallocations and discrimination." It also asks, in the same paragraph, if the "structural and accounting safeguards mandated under Sections 271 and 272 of the 1996 Act" will be adequate to prevent abuses. Finally it asks, "[I]f the Commission ultimately provides the BOCs with carrier-selection rights, should we be concerned that the BOCs, if they are able to provide interLATA service, will direct such service to themselves?"

Ameritech responds that the Commission should have no cause for concern in these regards. First of all, Congress has already answered the question even before the Commission could ask it, for the same Telecommunications Act that authorizes the BOCs to apply for authority to provide interLATA services originating in their home states through a separate subsidiary also directs the Commission in Section 276 to decide that the BOCs will have “the *same* right that independent payphone providers have to negotiate with the location provider” as to the choice of interLATA carrier [emphasis added]. The independent payphone providers, of course, are perfectly at liberty to select *any* interLATA carrier they may please, including themselves and any carrier with which they happen to be affiliated (subject only to the premises owner’s ultimate power to choose some other pay telephone).¹³ Thus if any limitation is imposed upon the BOC’s right to select its own affiliate as the carrier, it would not satisfy the statute, because then the BOCs would definitely *not* have the same right of selection as their rivals.

Moreover, even after a BOC is authorized to provide interLATA services originating in the BOC’s home states, the BOC as a payphone

¹³ They also may choose to presubscribe *all* the payphones they own to a single carrier (subject to the premises owner’s same power).

owner will not, contrary to the implication of the Commission's question, have any absolute right to "direct" calls to its own affiliated interLATA carrier. As already noted, the premises owner retains the ultimate choice of carrier, and even if the Commission's regulations purported to bestow such an unconditional right of selection upon BOC or non-BOC pay telephone owners, it would be completely ineffective against the premises owner's unfettered ability to select some different provider of pay telephones. Indeed, all that the BOCs would have is what the other pay telephone owners already have — the ability to make an economically rational decision to remove the payphone if the premises owner does not agree with the pay telephone owner's choice of carrier. As the providing of pay telephones becomes an ever more competitive enterprise, such decisions will less often be made. Again, what is mainly sought here is not the unrestrained right to actually choose the interLATA carrier, but the ability — presently barred by Judge Greene's 1988 rule — to *recommend* what carrier should be selected and to seek to persuade the premises owner to follow that direction. In addition, dialing around the presubscribed carrier has become more common than before, diluting the significance of the choice of the presubscribed IXC anyway

Furthermore, it is not correct to assume, as the Commission seems to have done, that the nondiscrimination provisions of Section 272 will apply to the BOC's participation in the choice of interLATA carrier at BOC payphones. This is because it will not be the network part of the BOC that will be selecting the interLATA carrier, but the entity that owns the pay telephones — which by then will have been through the nonstructural Computer-III-type separation required by Section 276. This BOC pay-telephone-owning entity will *not* be required to maintain separation from the Ameritech subsidiary providing in-region interLATA services. Under Section 272,¹⁴ separation is required to be maintained *only* between the interLATA subsidiary and “any operating company entity that is subject to the requirements of section 251(c)”¹⁵ — in other words, the “incumbent LEC” part of the BOC. The separated BOC payphone operation that comprises solely pay telephone instruments will no longer, by any stretch of the imagination, be

¹⁴ Section 272(a)(1) provides: “A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in paragraph (2) [that paragraph includes in-region interLATA service] unless it provides that service through one or more affiliates that — (A) are separate from any operating company entity that is subject to the requirements of section 251(c)”

¹⁵ That section states the duties of incumbent LECs, and incorporates the definition thereof found in Section 251(h), which generally provides that the “incumbent local exchange carrier” for any area is the provider of local telephone service in that area at the time of enactment.

part of the incumbent LEC. Moreover, the definition in Section 3(49) of the Act indisputably states that a payphone owner cannot be a “telecommunications carrier”;¹⁶ if Ameritech’s pay telephone operation will not even be a carrier, it could certainly never be a local exchange carrier, and even less an incumbent one. Therefore no Section 272 separation will be required between the pay telephones and the in-region interLATA subsidiary. In fact, the pay telephones could be put in the same subsidiary as the interLATA service.¹⁷ Thus there clearly will be no Section 272 rule against discrimination to apply as

¹⁶ Section 3(49) provides this definition: “The term ‘telecommunications carrier’ means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226).” In Section 226(a)(2) it is provided: “The term ‘aggregator’ means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.” The Commission has said: “Aggregators include hotels and motels, hospitals, universities, airports, gas stations, pay telephone owners, and others.” *In re Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 6 F.C.C.R. 4736, 4737 n.3 (1991)

¹⁷ Also, if the pay telephones are put in a subsidiary of their own — which any BOC might choose to do voluntarily, even though Section 276 requires only *nonstructural* separation — then that subsidiary, besides not being a carrier, not being a LEC, and not being an incumbent, would not even be a BOC, since the definition in Section 3(35) says that “Bell operating company” includes only the entities there specifically named and *not* any of their affiliates except a “successor or assign . . . that provides wireline telephone exchange service” This, of course, would put the pay telephone subsidiary completely outside the scope of Section 272.

between the payphone operation and the interLATA separate subsidiary.

In addition, even if Section 272 did apply, the efforts of the separated payphone operation to gain business for the affiliated (but also separated) interLATA subsidiary will be in harmony with the other types of permitted joint marketing of the interLATA subsidiary's services. Section 272(g)(2) of the Act expressly permits any Bell operating company to "market or sell interLATA service provided by an affiliate," and Section 272(g)(3) affirmatively declares that any such "joint marketing and sale" is not to be "considered to violate the non-discrimination provisions" of the Act. Since the *unseparated* part of the BOC may freely engage in the marketing of the subsidiary's interLATA services, it surely follows that the BOC pay telephone operation, which by then will have been separated according to Computer III principles, may also be engaged in the marketing of Ameritech's home-region interLATA services.

Congress has thus determined that the promotion of one's own affiliated interLATA services, whether done by the LEC itself or by the LEC's own separated pay telephone operation, is not to be condemned as discrimination, but is to be encouraged as a vital, procompetitive aspect of the single-source, one-stop shopping convenience that the

Telecommunications Act is instituting. Accordingly, any possible concerns over a potential discriminatory effect of the BOC's ability to participate in the choice of interLATA carrier have been dispelled by Congress itself, and the Commission need take no further action in this regard.¹⁸

A further question raised in Paragraph 72 of the NPRM concerns the potential ability of the BOC interLATA affiliate to engage in favorable treatment of the BOC payphone operations, such as by offering to provide interLATA services at a special low rate only on calls from BOC pay telephones. The Commission need not be concerned about this potential, because even in the unlikely event that it does occur, it will not result in any cognizable injury to competition when the BOC interLATA affiliate does not, as it must be assumed it will not, possess any market power in the interLATA market

¹⁸ Similar considerations apply to the Commission's further question, also found in Paragraph 72 of the NPRM, concerning the possibility that a BOC not yet authorized to provide in-region interLATA service might participate in the selection of an interLATA carrier in which the BOC had some contingent interest. Given that the selection of an affiliated carrier should be allowed as stated above, it should make no difference that the selection was made in advance of the actual interLATA authorization if it did not take effect until afterwards.

IV. Public Interest Pay Telephones

Public interest payphones (PIPs) are essentially payphones placed at locations where a payphone is required in the interest of public health, safety, and welfare, where there would otherwise not be a payphone. Payphones in these areas are typically provided at the request of government entities to meet the specific health, safety and welfare needs of the communities or travelers in the vicinity. PIPs are not under contract with a location provider.

Ameritech supports this basic definition of PIPs, and agrees that these payphones would fulfill a public policy objective which includes emergency access.

A. Definition/Criteria

Ameritech supports the national guidelines for PIPs. The California model established to address statewide designation.¹⁹ This model could be used as a platform from which to further develop criteria for PIPs.

¹⁹ California Public Utilities Commission, Workshop on Customer-Owned Pay Telephone Service in Response to Commission Decision 90-06-018 at 29-32 and Appendix D (December 21, 1993) (Workshop Report).

The criteria started with a payphone that did not “break even”, *i.e.*, recover sufficient revenue to cover the attributed costs, and additional criteria as follows:

1. The Public Pay Phone is not part of a contract which provides monetary benefit to the Station Agency; and
2. There is no other Public Phone located at the same address; and
3. The Public Pay Phone is not a coinless pay phone; and
4. The Station Agent on whose property the Public Pay Phone is located agrees to receiving no compensation from the calls generated over that pay phone; and
5. The general public should have unrestricted access to the Public Pay Phone. “Unrestricted Access” means that the pay phone should be physically and geographically accessible to the general public during the operating hours of the facility. Thus, if the pay phone is located inside the building, for example, the general public should be able to enter the building from the street to use the pay phone; and
6. If the Public Pay Phone is located indoors, the Station Agent on whose property the pay phone is located agrees to the placement of a prominent sign (outside and inside the facility) which directs the general public to the pay phone location; and
7. The Public Pay Phone meets one of the following conditions:
 - a) The Public Pay Phone is located in a site designated by a public agency as a gathering place where emergency aid is dispensed to the general public in the event of a natural disaster; or

- b) The Public Pay Phone is located in a location where those residing in that location cannot individually subscribe to basic telephone service because of the unavailability of facilities necessary for access to the network; or
- c) The Public Pay Phone is located in an area where no other pay phone is readily or effectively accessible to the general public. "Readily and effectively" accessible refers to the presence of at least one other pay phone available to the general public within 50 yards walking distance from the Public Pay Phone in question, assuming ideal conditions. There will be circumstances, however, when an alternate pay phone is within 50 yards walking distance from the Public Pay Phone in question where it may still be deemed as not "readily and effectively" accessible. Therefore, it is necessary to temper the application of this "50-yard" rule by considering all of the factors below in determining more accurately the extent to which the nearest alternative pay phone is available to the general public:
 - 1) Topography;
 - 2) Geography;
 - 3) Demographic characteristics of users (e.g., elderly, handicapped, low income-where residence subscription is low);
 - 4) Economic development of the area;
 - 5) Safety of the area;
 - 6) Weather conditions.

B. Funding

The guideline should allow for the placement of PIPs in cases where contracts exist *e.g.*, government contracts and the entity requests the service as long as the funding is provided separate from the existing contract and as stated below.

Ameritech supports national guidelines to be established for funding the maintenance of PIPs. They should specify that local government entities that request PIPs, should use public bids to request the service and have them funded from general tax revenues by same requesting government entity.

V. Other Issues

A. The Commission's Anti-blocking Rules Will Be Adequate If the "Dialing Parity" Currently Provided by LECs Is Preserved.

In Paragraph 84 of the NPRM, the Commission observes that Section 251(b)(3) of the Act imposes upon all LECs the duty to provide "dialing parity" and tentatively concludes that the "benefits" of dialing parity "should extend to all payphone location providers."

Aggregator telephones have always been a prominent equal access problem, because an end user's desire to dial around the presubscribed carrier conflicts with the aggregator's desire to gain IXC commission

payments, which are paid only on presubscribed calls. As the Commission has recently recounted in another NPRM,²⁰ in the past this conflict has led some location providers to *block* the dialing of “10XXX” and other access codes made available by the LEC. However, under the Telephone Operator Consumer Services Improvement Act of 1990,²¹ (“TOCSIA”), the Commission’s Rules now prohibit this practice.²²

Ameritech believes that the existing anti-blocking rules remain sufficient to prevent the aggregators’ defeating the equal access features provided by LECs. However, the aggregator rules depend upon the assumption that the LECs — *all* LECs — will continue to provide those features. In this regard, Ameritech suggests that the Commission carefully scrutinize the potential legal pitfalls of the “dialing parity” required of all LECs by Section 251(b)(3) of the 1996 Act, which arguably does not incorporate the full list of equal access

²⁰ *In re Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, released June 6, 1996.

²¹ 47 U.S.C. § 226.

²² Section 64.704(a) provides: “Each aggregator shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use ‘800’ and ‘950’ access code numbers to obtain access to the provider of operator services desired by the consumer.” Section 64.704(c) provides: “Each aggregator shall . . . ensure that any of its equipment presubscribed to a provider of operator services allows the consumer to use equal access codes to obtain access to the consumer’s desired provider of operator services.”

features that have previously been established by the Commission under the authority of the 1934 Act. In particular, although Section 251(b)(3) imposes upon all LECs “the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service,” Section 3(35) seems to define “dialing parity”²³ to include *only* presubscription,²⁴ and omits all mention of “10XXX” or any other form of dialed access code.²⁵

Section 251(b)(3) thus seems to differ from current equal access rules, which require all LECs to provide *both* the option of presubscription to a preferred IXC *and* a “10XXX” dial-around option enabling the caller to avoid the presubscribed IXC when desired. These dual

²³ Section 3(35) defines “dialing parity” to mean that a person not a LEC affiliate “is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among 2 or more telecommunications services providers” (including the LEC).

²⁴ Even the presubscription rule is less stringent under Section 251(b)(3) than before, since it need only be provided to “competing providers,” thus suggesting that LECs not affiliated with a toll carrier need not provide it at all. Indeed, if Section 251(b)(3) were to become the only dialing parity rule, even the BOCs, before obtaining in-region interLATA authority, could cease providing their end users with a choice of presubscribed interLATA carrier.

²⁵ In fact, the statutory language, as quoted in note 23, *supra*, emphasizes that dialing parity means routing “without the use of any access code,” and thus tends to negate the idea of “10XXX” dialing.

requirements are found in the AT&T divestiture decree,²⁶ the GTE decree,²⁷ and the Commission's own 1985 decision in CC Docket 78-72, in which the same equal access rules are imposed upon the non-Bell, non-GTE independent telephone companies.²⁸ So far, no difference

²⁶ *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 226 (D.D.C. 1982), *aff'd mem. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). Appendix B, the main source of the decree's "equal access" rules, separately required both presubscription [App. B, ¶ A(2)(ii)] and the alternative of access code dialing to avoid the presubscribed carrier — at first, for IXCs other than AT&T, through "access codes containing the minimum number of digits necessary . . . to permit nationwide, multiple carrier designation" [App. B, ¶ A(2)(i)], and later, after changes that were supposed to be made in the North American Number Plan, "exchange access to every interexchange carrier, including AT&T, through a uniform number of digits" [App. B, ¶ A(2)(iii)]. (As it happened, the use of access codes beginning with "10" — originally "10XX", and later "10XXX" — made it possible to achieve equal-digit dialing even without any further changes in the NANP, so that issue was soon moot, meaning that "10XXX" was soon a full-fledged decree requirement.)

²⁷ *United States v. GTE Corp.*, 1985-1 Trade Cas. (CCH) ¶ 66,355 (D.D.C. Dec. 21, 1984, restated Jan. 11, 1985).

²⁸ *In re MTS and WATS Market Structure*, CC Docket 78-72, Phase III, Report and Order, Mar. 19, 1985, 100 F.C.C.2d 860. There is no question that 10XXX-type dialing is one of the required equal access features, for the Commission there said, "The following requirements are imposed: (a) the option of preselecting an IXC, through which originating traffic may be routed without the use of an access code . . . ; (b) access signalling to reach carriers that are not so preselected must be provided with the minimum number of digits; and (c) upon revision of the nationwide numbering plan . . . , all IXCs shall be accessed with the same number of digits." Indeed, the concept of equal access has always included "10XXX" dialing; more recently the Commission described equal access by saying, "Historically, equal access has included a program of presubscription, balloting and allocation procedures, technical interconnection standards, and the '1+' form of access for presubscribed lines, with 10XXX access for non-presubscribed access". *In re Equal Access and Interconnection Obligations Pertaining to Commercial*

(Footnote Continued . . .)

between Section 251(b)(3) and the existing rules has been noticeable, since all LECs are required by the equal access “carryover” clause of the 1996 Act, Section 251(g), to continue to provide equal access according to whichever of the old rules applies.²⁹ This “carryover” will go on until those old rules are “explicitly superseded” by new regulations to be prescribed by the Commission.

However, the potential danger for the immediate future is that in taking some action with regard to Section 251(b)(3), which does not itself require “10XXX” dialing, the Commission might be construed to have thereby “superseded” the carried-over AT&T and GTE decrees as well as the carried-over 1985 equal access rules from CC Docket 78-72. That would mean that the “10XXX” dialing rule would be abolished for all LECs before there was any new Commission rule to take its place. If all LECs were thus excused from the “10XXX” obligation, it would

(Footnote Continued . . .)

Mobile Radio Services, NPRM, CC Docket 94-54, RM-8012, 9 F.C.C.R. 5408 at ¶ 50 (1994).

²⁹ Section 251(g) provides that in the interim, “each local exchange carrier . . . shall provide exchange access . . . to interexchange carriers . . . with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment . . . under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment . . .”.

be impossible for aggregators to comply with the anti-blocking rules.³⁰ That plainly would not be the result intended by Congress, which has commanded the use of access codes in TOCSIA. Accordingly, before the Commission takes any action whereby the carried-over equal access rules would be “superseded,” it should not only look to the implementation of Section 251(b)(3) of the 1996 Act, but should also preserve access code dialing by *re-implementing* the equal access rules that have long been in place under authority of TOCSIA and the 1934 Act.

B. Keypads Without Letter Markings Should Be Prohibited.

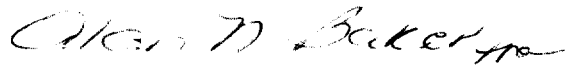
In Paragraph 85 of the NPRM, the Commission calls for comment on a proposal to prohibit pay telephone instruments which do not have the letters of the alphabet in the usual place on the keypad, hindering the dialing of various access codes that use mnemonic devices like “1-800-COLLECT.” Ameritech does not make use of such devices and submits they should be prohibited for all providers.

³⁰ Presubscription and access code dialing are features that local exchange carriers provide on *all* their lines, not just on those lines that serve pay telephones or other aggregator locations, so the repeal of access code dialing would have consequences well beyond the realm of aggregator services; however, this discussion of the consequences is confined to the pay telephone issues raised by the NPRM.

VI. Conclusion

For the reasons stated, in applying Section 276, the Commission should establish a per-call rate for both "0+" and dial-around calls, subject to the right of the carrier and the pay telephone owner to negotiate a different rate for "0+" calls; Bell operating companies should be allowed to participate in the selection of interLATA carriers at BOC pay telephones; and the obligations of all LECs to honor "10XXX" and similar carrier selection codes should be made plain.

Respectfully submitted,



ALAN N. BAKER
Attorney for Ameritech
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196
(847) 248-4876

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AMERITECH
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ATTACHMENT A

Part 32 Accounts Attributable to Pay Telephone Operations

Acct	Description
1130	Cash
1180	Telecommunications Accounts Receivable
1181	Accounts Receivable Allowance — Telecommunications
1190	Other Accounts Receivable
1191	Accounts Receivable Allowance — Other
1220	Inventories
1439	Deferred Charges
2112	Motor Vehicles
2116	Other Work Equipment
2121	Buildings
2122	Furniture
2123	Office Equipment
2124	General Purpose Computers
2311	Station Apparatus
2351	Public Telephone Terminal Equipment
2690	Intangible Assets
3100	Accumulated Depreciation
4010	Accounts Payable
4070	Income Taxes Accrued
4080	Other Taxes Accrued
4100	Net Current Deferred Operating Income Taxes
4110	Net Current Deferred NonOperating Income Taxes
4130	Other Current Liabilities
4310	Other Long Term Liabilities
4340	Net Noncurrent Deferred Operating Income Taxes
4350	Net Noncurrent Deferred Nonoperating Income Taxes

5001	Basic Area Revenue
5010	Public Telephone Revenue
5040	Local Private Line Revenue
5050	Customer Premises Revenue
5060	Other Local Exchange Revenue
5081	End User Revenue
5084	State Access Revenue
5100	Long Distance Message Revenue
5230	Directory Revenue
5262	Customer Operations Revenue
5264	Other Incidental Regulated Revenue
5280	Nonregulated Operating Revenue
5301	Uncollectible Revenue — Telecommunication
6112	Motor Vehicle Expense
6116	Other Work Equipment Expense
6121	Land and Building Expense
6122	Furniture and Artworks Expense
6123	Office Equipment Expense
6124	General Purpose Computers Expense
6211	Analog Electronic Expense
6212	Digital Electronic Expense
6232	Circuit Equipment Expense
6311	Station Apparatus Expense
6351	Public Telephone Terminal Equipment Expense
6362	Other Terminal Equipment Expense
6421	Aerial Cable Expense
6422	Underground Cable Expense
6423	Buried Cable Expense
6426	Intrabuilding Network Cable Expense
6512	Provisioning Expense
6533	Testing Expense
6534	Plant Operations Administration Expense
6611	Product Management
6612	Sales
6613	Product Advertising
6621	Call Completion Services
6622	Number Services
6623	Customer Services

6711	Executive
6721	Accounting and Finance
6722	External Relations
6723	Human Resources
6724	Information Management
6725	Legal
6726	Procurement
6728	Other General and Administrative